AFR

10.1.06

(284)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 631 of 2005

Dr. Tanweer Ahmed

-Versus-

State of Chhattisgarh and others

Post for order on 10th January, 2006.

Sd/-
Satish K. Agnihotri
Judge

(2338)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 631 of 2005

Petitioner		Dr. Tanweer Ahmed, S/o Late Shri Siraj Ahmed, aged about 42 years, R/o Mahamaya Road, Ambikapur, District- Surguja (C.G.).
	Versus	
Respondents	1.	State of Chhattisgarh, Through the Secretary, Tribal Development, D.K.S. Bhawan, Raipur, District- Raipur (C.G.).
	2.	The Secretary, Veterinary Department, D. K. S. Bhawan, Raipur, District- Raipur (C.G.).
	3.	The Chhattisgarh Tribal Development Society, Through its State Programme Director Near Desh Bandhu Press, Magarpara, Bilaspur (C.G.).
	4.	Shri R. S. Tomar, Sr. Lecturer, Government Polytechnic College, Ambikapur, District- Surguja (C.G.).

Single Bench : Hon'ble Mr. Justice **Satish K. Agnihotri**.

Shri Pritinker Diwakar, Senior Advocate with Shri Kunal Das, Advocate for the Petitioner.

Shri P. S. Koshy, Deputy Advocate General for Respondents No. 1 and 2.

Shri Prashant Mishra, Senior Advocate with Shri G. K. Beriwal, Advocate and Shri Yashwant Singh Thakur, Advocate for Respondent No.3.

Shri Ranbir Singh Marhas, Advocate for Respondent No.4.

O R D E R

(January, 2006)

The following order of the Court was passed by **Satish K. Agnihotri, J.**

1. The present petition filed under Article 226/227 of the Constitution of India impugns the order dated 11.2.2005 (Annexure P/7) issued by the State Programme Director, Chhattisgarh Tribal Development Society, Bilaspur (for short 'the Society') whereby the Respondent No.4 Senior Lecturer, Government Polytechnic College, Ambikapur was

(236)

posted as District Programme Manager, Ambikapur and the additional charge of Dr. Tanweer Ahmed to work as District Programme Manager, Chhattisgarh Tribal Development Programme was withdrawn.

2. The facts in nutshell are that the petitioner, who was working as Veterinary Extension Officer, was given additional charge of District Programme Officer, Chhattisgarh Tribal Development Programme at Ambikapur vide order dated 8.8.2002 (Annexure P/4). Subsequently, vide order dated 11.2.2005 (Annexure P/7) the Respondent No.4 who was working as Senior Lecturer Govt. Polytechnic College, Ambikapur was appointed as District Programme Manager, Ambikapur in place of the petitioner and the petitioner was relieved from the additional charge of District Programme Manager.

3. The petitioner has filed this petition impugning the order dated 11.2.2005(Annexure P/7) seeking a writ/direction to quash the said order and further a direction against the Respondents No. 1 to 3 to permit the petitioner to complete full tenure of his deputation as District Programme Manager till the project is completed.

4. Shri Pritinker Diwakar, learned senior counsel with Shri Kunal Das, learned counsel, appearing for the petitioner submitted that the petitioner was appointed, pursuant to the regular selection made on the basis of the advertisement dated 1.5.2002 (Annexure P/1). The interview was conducted by a panel of experts on 1.7.2002 in accordance with the Financial and Administrative Regulations made by the governing body with the approval of the then Govt. of Madhya Pradesh in exercise of the powers under Rule 43 of the Rules of the M.P. Tribal Development Society (MPTDS). Chapter VII of the Regulations deals with the recruitment and service regulations. It was contended that the District Programme Manager can be appointed on

(23)

deputation only. The petitioner along with others made an application pursuant to the advertisement dated 1.5.2002 (Annexure P/1) for appointment on deputation on two posts of District Programme Manager at Ambikapur and Patthalgaon (Jashpur). The petitioner was called for interview and he was selected for the post of the District Programme Manager, Ambikapur vide order dated 8.8.2002 (Annexure P/4). It was further contended that the parent department has also granted 'no objection' by letter dated 28.3.3003 (Annexure P/6). The said order was an appointment on deputation as per the requirement of the service regulations. Learned counsel urged that since the petitioner was appointed on deputation the service of the petitioner could not be repatriated back to the parent department before completion of the tenure and without permission of the parent department. The appointment of the Respondent No.4 on the post of District Programme Manager, without following proper procedure of selection is bad and nullity. The Respondent No.4 was appointed at the instance of one Shri Shiv Prasad Singh, President, Bhartiya Janta Party. The order dated 11.2.2005 was passed in haste by the officer who was holding the charge of the State Programme Officer for a period of 10 days in absence of the regular State Programme Director. This amounts to malafide exercise of powers.

5. Shri Prashant Mishra, learned Senior counsel with Shri G. K. Beriwal, learned counsel appearing for respondent No.3, per contra, submitted that it is true that the advertisement was made for appointment of District Programme Manager at 2 places i.e. at Ambikapur and at Patthalgaon (Jashpur). The petitioner along with others made an application for appointment on the post on deputation. The petitioner was selected for appointment as District Programme Manager at Ambikapur and one Shri A. K. Tiwari was

(234)

selected for appointment on the post of District Programme Manager at Patthalgaon (Jashpur), but no order was passed for appointment of the petitioner on deputation pursuant to the process of selection pursuant to the advertisement dated 1.5.2002. The appointment order dated 8.8.2002 (Annexure P/4) issued by then Revenue Commissioner, Bilaspur Division, Bilaspur clearly states that the petitioner and Shri A. K. Tiwari were posted as District Programme Officer on additional charge, while looking after their original job responsibility, till further orders. The order dated 8.8.2002 is clearly indicative of the nature that the appointment was not on deputation but it was mere posting to look after the work of the District Programme Officer, additionally, while continuing their original job responsibility. There were several complaints with regard to the work of the petitioner as he was not attending regular meetings and not reporting the stage and status of the implementation of the programme to the Higher Officers in time. There was no sincerity and diligence on the part of the petitioner in the programme, the Society received several complaints against the petitioner. This programme is one of the 8 projects in the country financed by the International Fund for Agricultural Development, Head Quarter at Rome (Italy). The laxity and insincerity on the part of any officer in the project was not tolerable by the Chhattisgarh Tribal Development Society. Accordingly Shri Shiv Prasad Singh, who was an important functionary of the society being the Vice Chairman of the Sarguja Development Authority, requested the Government to look into the performance of the petitioner and take appropriate steps. The State Government after having considered all the aspects of the matter, directed the then State Programme Director to pass appropriate order. In absence of the Regular State Programme Officer Shri P. C. Pandey, who had gone to

2891

attend a meeting of the I.F.A.D. for submitting mid term review of the programme, Shri Sonmani Bora was appointed as State Programme Director. The regular State Programme Director Shri P.C.Pandey had initiated the action and had submitted the information to the Chief Secretary, Govt. of Chhattisgarh, who is Chairman of the Chhattisgarh Development Society. Several complaints (Annexure R/1-5) against the petitioner were made.

6. Learned counsel further submitted that the order dated 11.2.2005 (Annexure P/7) clearly indicates that the order was passed after obtaining approval of the Chief Secretary, Govt. of Chhattisgarh and Chairman Tribal Development Society, Raipur. Shri R. S. Tomar was appointed temporarily till further order. Learned counsel relied on the decision of the Supreme Court in **Union of India Vs. Janardhan Debanath**[1] in support of his contention that in case of transfer/posting of a person on the basis of inefficiency or complaint, the person concerned need not be granted an opportunity of hearing as it is only an administrative order regarding transfer/posting of the person. The petitioner was posted on additional charge while continuing on his original job responsibility. The impugned order has simply withdrawn the additional charge from the petitioner, which was done in the interest of the Tribal Development Programme.

7. Learned counsel appearing for the Respondents No. 1 and 2, so also learned counsel appearing for the Respondent No.4 adopts the submissions made by Shri Prashant Mishra, learned senior counsel, appearing for the Respondent No.3.

---

[1]2004 (4) S.C.C. 244

(240)

8. I have heard learned counsel for the parties and perused the papers appended to the petition & return, and note sheets dated 4.2.2005 of Chhattisgarh, Tribal Development Society and further note sheet with regard to the posting of the petitioner on additional charge as District Programme Manager.

9. The order dated 8.8.2002 (Annexure P/4) clearly indicates that the petitioner was given additional charge of District Programme Officer, Chhattisgarh Tribal Development Programme at Ambikapur while continuing to hold the original post of Veterinary Extension Officer, Ambikapur. It does not state that the order of appointment of the petitioner on the post of District Programme Officer was on deputation. On perusal of the proceedings, I have found that though the petitioner was interviewed pursuant to the application made by the petitioner for his appointment on the post of District Programme Officer on deputation, consequent upon the advertisement dated 1st May 2002, but the order was not passed on the basis of the application and interview conducted thereof. Even otherwise this order dated 8.8.2002 assigning the additional charge of District Programme Officer to the petitioner was passed before no objection certificate Annexure P/6 was granted by the parent department on 28.3.2003.

10. The Supreme Court in the case of **Umapati Choudhary Vs. State of Bihar and another**[2], has defined 'deputation' in the following terms:-

> "Deputation can be aptly described as an assignment of an employee (commonly referred to as the deputationist) of one department or cadre or even an organisation (commonly referred to

---

[2](1999) 4 S.C.C. 659

(244)

as the parent department or lending authority) to another department or cadre or organization (commonly referred to as the borrowing authority). The necessity for sending on deputation arises in public interest to meet the exigencies of public service. The concept of deputation is consensual and involves a voluntary decision of the employer to lend the services of his employee and a corresponding acceptance of such services by the borrowing employer. It also involves the consent of the employee to go on deputation or not."

In the present case there was no transfer of service from the Veterinary Department to the Tribal Welfare Department. The petitioner was simply assigned the additional responsibility while holding the original post, as district Programme Manager in the Society.

11. The contentions of learned counsel for the petitioner that the impugned order dated 11.2.2005 was passed at the instance of one Shri Shiv Pratap Singh, President, Bhartiya Janta Party, is not sustainable. Shri Shiv Pratap Singh was Chairman of Surguja Development Authority, responsible for the Chhattisgarh Tribal Development Programme also, has made complaints along with complaints made by other persons. The State Programme Director has passed the order withdrawing additional charge of the District Programme Manager from the petitioner after obtaining approval of the Chief Secretary, Govt. of Chhattisgarh and Chairman Chhattisgarh Tribal Development Programme and Secretary/Commissioner Technical Education/Higher Education, Govt. of Chhattisgarh. This order is not an order of repatriation but the order of withdrawal of the additional charge. The petitioner has no

242

right to be retained till the project is complete. The appointment of the respondent No.4 by the State Programme Director cannot be questioned because the said appointment is temporary till further orders.

12. Shri Sonmani Bora, who was holding the charge of the State Programme Director in absence of the regular State Programme Director, was competent to pass the impugned order dated 11.2.2005. The complaints were initiated by the regular State Programme Director and the impugned order was passed after obtaining approval of the competent authorities, hence the impugned order dated 11.2.2005 cannot be held as bad or nullity.

13. The reliance of the Respondent No.3 on the decision of the Supreme Court in **Union of India Vs. Janardhan Debanath** (supra) may not be relevant to the facts of the case, however, posting of an employee on a particular post is prerogative of the employer. The employer is fully justified to post an employee in the administrative exigency and in the public interest. There is no necessity of holding an enquiry if the posting does not involve any adverse impact or does not visit the person concerned with any penal consequence. In the instant case withdrawal of additional charge in no way can be held that the petitioner has been adversely affected or it leads to penal consequence.

14. For the reasons stated above, the petition is dismissed with no order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Thakur